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August 10, 2023

VIA ECF

Honorable Ronnie Abrams
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Courtroom No. 1506
New York, New York 10007

RE: *Clean Energy Experts v. Nick Benhammou and Daniel Yomtobian, Case No. 1:23-cv-01940-RA, joint letter pursuant to August 2, 2023 order*

Dear Honorable Judge Abrams:

Please allow this correspondence to respond to the order contained in docket entry no. 22, mandating that a joint letter be filed by counsel no later than August 10, 2023. [ECF 22]. After conferral among themselves, the parties submit the instant correspondence and will submit a new proposed Case Management Plan and Scheduling Order, upon the Court's determination of the issues presented in this correspondence and direction.¹

Appearances

Brendan T. Mahoney, Esq., of Gordon & Rees, represents Plaintiff Clean Energy Experts. Alex Kadocznikov of Shiryak, Bowman, Anderson, Gill & Kadocznikov represents Defendant Daniel Yomtobian. Counsel Yifat Schnur of YVLS ESQ, LLC, New York, New York represents Defendant Nick Benhammou.

Plaintiff's Position on the Pleadings

Plaintiff is seeking leave of the court to file motions for default against Defendants, for their failure to respond to the Complaint filed March 9, 2023 [ECF 2]. The Defendants' respective responsive pleadings to Plaintiff's Complaint are both past due. Specifically, Mr. Yomtobian sought an extension of time to respond to the Complaint from Plaintiff, and Plaintiff

¹ Prior such submitted Case Management Plans and Proposed Orders have been rendered moot and were not acted upon by the court, in light of adjournments of conferences and various deadlines to Answer by agreement of the parties or application which the court granted.

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agreed to such an extension, but said extension expired in June, 2023. Defendant Yomtobian has made no further requests to counsel for more time until today, and has not made an application to the court seeking any such extension. Further, Defendant Benhammou made application to the Court for more time to respond to the Complaint on June 13, 2023, and the Court granted such an extension up to and including July 31, 2023. See, ECF 19 and 20, with attendant entry dated June 14, 2023. To date, neither defendant has filed or served any responsive pleading. It is Plaintiff's position that both defendants are in default. Therefore, Plaintiff is making an application entry of an order of default against both Defendants pursuant to FRCP 55(2), after which time Plaintiff will seek an inquest on damages per FRCP 55 (2)(A-C).

Defendants' Position on the Pleadings

Defendants are seeking an extension of time up to and including August 17, 2023, to file their respective Answers to the Complaint. Defendants have indicated that they intend to file their respective post-answer motions for judgment or seeking other relief known unto them, after filing such answers.

Counsel for Benhammou indicated she was under the impression, as per the conference on June 21, 2023, a joint letter was to be filed by July 12 indicating the status of case and potential settlement, which may have done away with the need to file an answer or a motion to dismiss. Ms. Schnur further indicated she was waiting for Plaintiff's counsel to provide said letter, as she had informed the Court and all parties during the conference, she would be out of the country during the time the letter was due and thus would provide line edits to any letter presented. No such letter was presented on or before July 12, 2023. Counsel to Plaintiff indicates that he was waiting for a docket entry order regarding this letter, which ultimately came on August 2, 2023, and to which this letter responds.

Brief description of nature of action and the principal defenses thereto:

Plaintiff Clean Energy Experts (CEE) brought this action on March 9, 2023, alleging causes of action for conversion, fraud, and misrepresentation against Defendants Nick Benhammou and Daniel Yomtobian. *See, ECF # 2.* This action arises from repeated charge backs beginning in June, 2022 and made from the Defendants' accounts against sales lead fees that CEE assessed. Plaintiff alleges economic damages in excess of \$250,000. Defendants have yet to file a pleading responsive to Plaintiff's complaint, but will be asserting defenses to this action.

Explanation of jurisdiction and venue:

Jurisdiction is proper under 28 U.S.C. § 1332, based on diversity of the parties. Supplemental Jurisdiction is proper for any related state law claims under 28 U.S.C. § 1337(a), none of which are contemplated by Plaintiff at this time. Venue is proper under 28 U.S.C. § 1337(a) based on the Defendants' acts and omissions, including the submission of allegedly fraudulent chargebacks within the Southern District of New York. Plaintiff CEE is a limited

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liability company existing under the laws of the State of California, with a principal place of business in Manhattan Beach, California. As set forth in Rule 7.1 Corporate Disclosure Statement Plaintiff it is a direct, wholly-owned subsidiary of Sunrun Inc., which is a Delaware corporation. *See, ECF # 4.*

Description of contemplated and/or outstanding motions:

Plaintiff contemplates the above-mentioned motion for default to be filed against the defendants, for their failure to respond to the March 9, 2023 Complaint, and may bring a dispositive motion at the close of discovery. As noted above, Defendants have indicated that they will be pursuing dispositive motions, such as a motion for judgment on the pleadings, or seeking other relief known unto them.

Description of discovery already taken place or necessary for settlement discussions:

No formal discovery has taken place, although the Plaintiff has annexed various documents which Plaintiff claims underlie this dispute to the Complaint. Importantly, the court encouraged the parties to stay discovery, although it does not appear that such a stay was reduced to an order, to facilitate the Defendants' desire to file pre-answer motions as well as to facilitate settlement discussions. As noted above, the time to file any such pre-answer motion, or answer at all, is now past with no such filing having been made by either defendant. It is Plaintiff's position that discovery must begin immediately, and in that regard Plaintiff intends on subpoenaing certain American Express records, which Plaintiff believes contain information relevant to the charge back issues that underlie this lawsuit. As discussed below, settlement discussions appear to be moving very slowly, with some discussions having been had between Plaintiff and defendant Benhammou. Given the time elapsed, these discussions now need to happen concurrently with progress in the litigation, i.e. discovery.

Description of prior settlement discussions and settlement prospects:

Settlement discussions presently remain in their nascent stage. Plaintiff's position is that it is entitled to money damages, as alleged in the Complaint. Defendants have yet to make any offer of settlement, although there has been some limited discussions between Plaintiff and defendant Benhammou concerning a possible, partial resolution.

Estimated length of trial:

The parties estimate that the trial in this matter will take one to three (1-3) days.

Other information which may assist the Court in advancing this case:

It is Plaintiff's position that, at a minimum and absent a default, discovery must begin to proceed at this juncture. Therefore, we will submit a new scheduling order with dates reflecting

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the prior orders submitted, but pushing those dates forward to accommodate the time elapsed.

We thank the Court and Your Honor for your attention and courtesies.

Sincerely,



Brendan T. Mahoney, Esq.

BTM/olp

CC:

VIA ECF

Counsel to all parties of record